

**TRANSCRIPT OF RECORD**

---

---

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1925**

**No. 274**

---

**GENERAL INVESTMENT COMPANY, APPELLANT,**

**vs.**

**THE NEW YORK CENTRAL RAILROAD COMPANY**

---

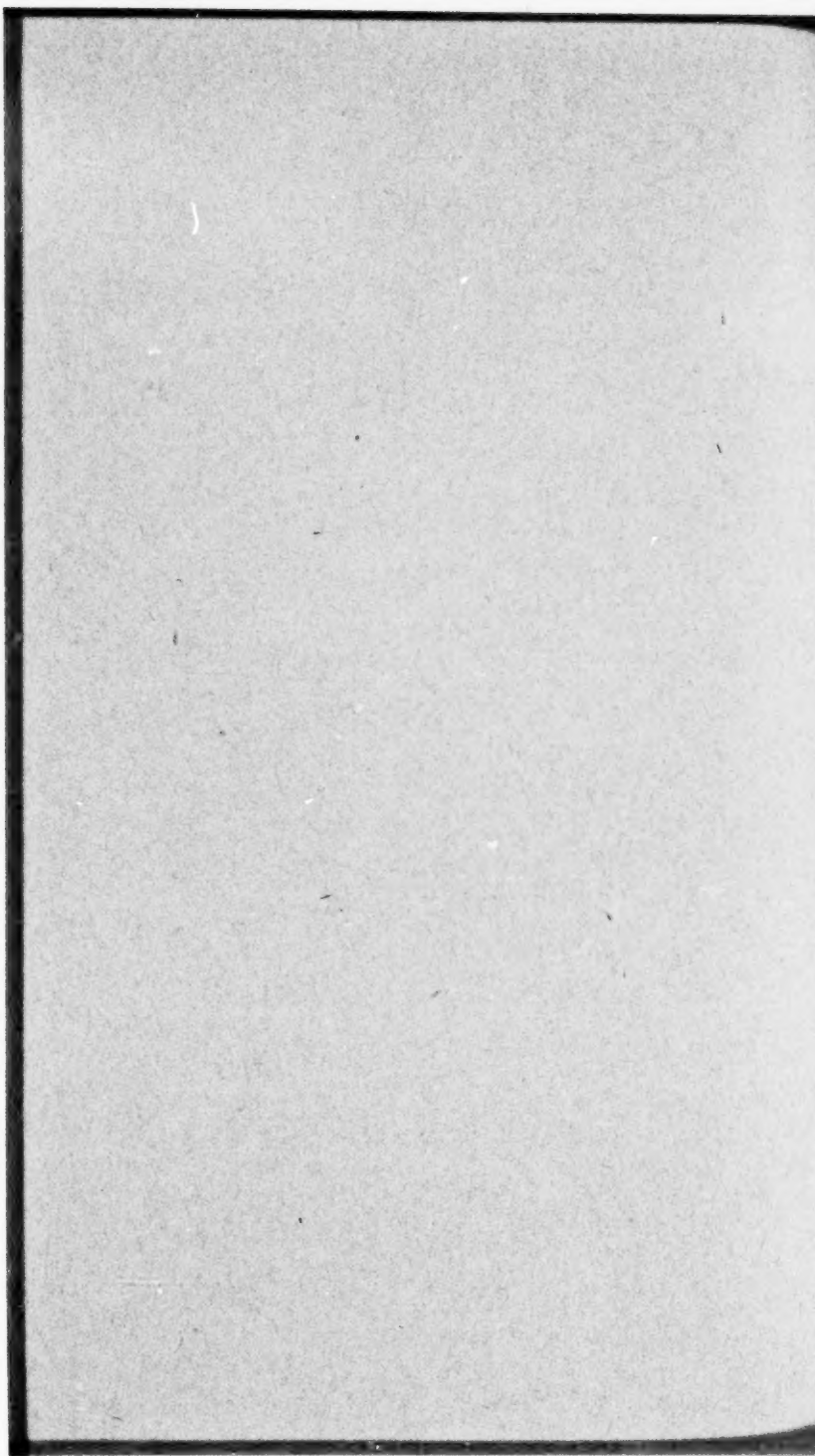
**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF OHIO**

---

---

**FILED FEBRUARY 11, 1925**

**(30,864)**



(30,864)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 274

GENERAL INVESTMENT COMPANY, APPELLANT,

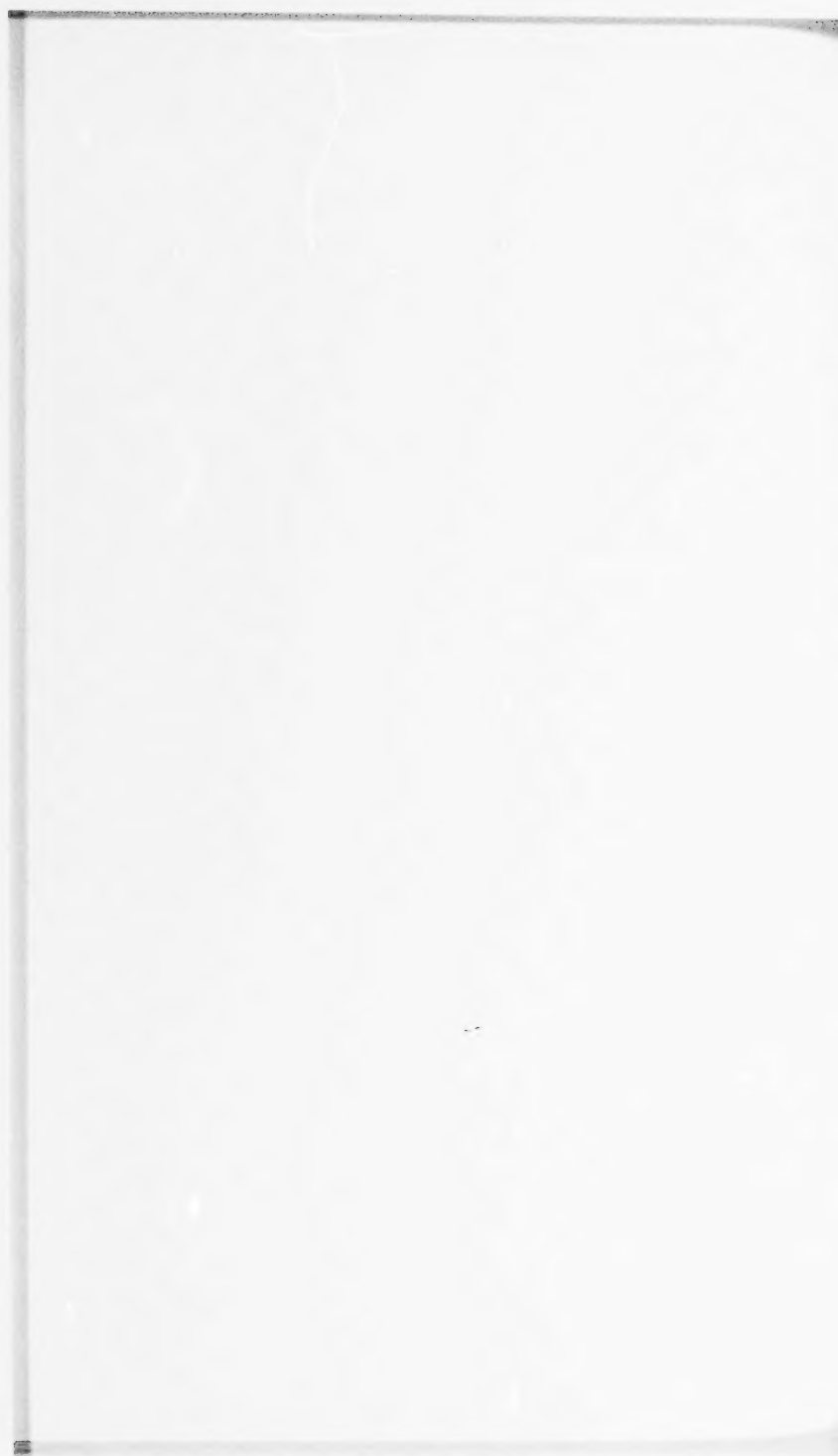
v.

THE NEW YORK CENTRAL RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF OHIO

INDEX

	Original	Print
Record from the district court of the United States, northern district of Ohio.....	1	1
Caption.....(omitted in printing) ..	3	1
Bill of complaint.....	4	1
Subpoena and marshal's return.....	28	18
Motion of defendant to dismiss.....	29	19
Memorandum opinion, Westenhaver, J., on motion to dismiss .....	31	20
Order dismissing bill of complaint.....	33	21
Petition for appeal.....	34	22
Assignment of errors.....	35	22
Order allowing appeal.....	36	23
Bond on appeal.....(omitted in printing) ..	37	23
Citation and service.....(omitted in printing) ..	38	23
Certificate of district judge certifying the question of jurisdiction .....	39	23
Order extending time.....	40	24
Præcipe for transcript of record.....	41	24
Clerk's certificate.....	42	25



[fols. 1-3]

[Caption omitted]

[fol. 4] **IN UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION**

In Equity. No. 1180

GENERAL INVESTMENT COMPANY, Plaintiff,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY, Defendant

BILL OF COMPLAINT—Filed June 20, 1924

To the Honorable the Judges of the District Court of the United States for the Northern District of Ohio, Eastern Division, sitting as a Court of Equity:

General Investment Company, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, and a citizen and resident of the State of Maine, brings this, its bill of complaint, against The New York Central Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and of other States hereinafter named, and a citizen and resident of each of such states, and thereupon complains and respectfully represents, alleges and shows unto this Honorable Court as follows:

1. Plaintiff, General Investment Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Maine, and is a citizen and resident of said State, and has its principal office and place of business in the City of Portland, Maine.

2. Defendant, The New York Central Railroad Company, hereinafter, for the sake of brevity, sometimes called or referred to as the New York Central Company, is a consolidated railroad corporation, organized and existing under and by virtue of the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, is a citizen and resident of each of said States, and owns and operates a railroad in the County of Cuyahoga, Ohio, and other counties in the several states above mentioned, and has its principal [fol. 5] office and place of business within the State of Ohio, at the City of Cleveland and County of Cuyahoga, in said State.

3. Said defendant, The New York Central Railroad Company, was formed on or about December 22nd, 1914, under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, pursuant to a consolidation agreement, bearing date April 29, 1914, authorized by the respective boards of directors of the corporations parties thereto, between The New York Central & Hudson River Railroad Company, a corporation of New York, here-

inafter sometimes called or referred to as the Hudson River Company, and The Lake Shore and Michigan Southern Railway Company, a corporation of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, hereinafter sometimes called or referred to as the Lake Shore Company, and nine subsidiary companies controlled by said two first named consolidating companies. The said consolidation agreement, among other things, provided;

(a) That the new consolidated corporation should be called The New York Central Railroad Company;

(b) That its authorized capital stock should be \$300,000,000, consisting of 3,000,000 shares of the par value of \$100 each;

(c) That 2,495,904  $6\frac{10}{100}$  shares should be issued in exchange for the outstanding capital stock of the consolidating corporations not held by The New York Central & Hudson River Railroad Company and The Lake Shore and Michigan Southern Railway Company;

(d) That the holders of 2,255,810  $2\frac{3}{4}$  shares of the capital stock of The New York Central & Hudson River Railroad Company should receive an equal number of shares of the consolidated corporation, and the holders of 47,069 shares of The Lake Shore & Michigan Southern Railway Company, being the minority stock held by persons other than The New York Central & Hudson River Railroad Company, should receive 235,345 shares of the capital stock of the consolidated company, in the ratio of 5 shares of new stock for 1 share of old stock.

4. At and before the time of the consolidation above referred to, on December 22nd, 1914, plaintiff was the owner of \$30,000 par value of the capital stock of The New York Central & Hudson River [fol. 6] Railroad Company, which it acquired on or before February 24, 1914, and of 5 shares of the capital stock, of the par value of \$100 each, of The Lake Shore and Michigan Southern Railway Company. As a result of said consolidation, the said shares were merged into the capital stock of the consolidated company, the defendant, The New York Central Railroad Company, against the written and oral protests of plaintiff made at the respective meetings of stockholders of The New York Central & Hudson River Railroad Company and The Lake Shore and Michigan Southern Railway Company, held to consider and vote upon the question of approving the agreement for consolidation, and in face of the court proceedings instituted by plaintiff, hereinafter referred to.

The plaintiff is now and ever since a time prior to the date of said consolidation on December 22nd, 1914, has been the owner and holder of record of said shares of stock respectively issued by The New York Central & Hudson River Railroad Company and The Lake Shore and Michigan Southern Railway Company, which said shares, by the terms of said consolidation agreement, now represent 325 shares, of the par value of \$100 each, of the capital stock of the defendant.

5. At the time of said consolidation, December 22nd, 1914, and for many years prior thereto, The New York Central & Hudson-River Railroad Company owned and operated a line of railroad from the City of New York, State of New York, along the east bank of the Hudson River to Albany, and thence west to the City of Buffalo, New York, and said Company also controlled and operated, through a long term lease and ownership of its entire capital stock, the railroad of the West Shore Railroad Company, extending from Weehawken, State of New Jersey, opposite the City of New York, along the west bank of the Hudson River to Albany and Schenectady, and thence west to Buffalo, in the State of New York; said two lines of railroad were and are closely parallel for the entire distance of about 440 miles, between New York City and Buffalo, New York.

Said Hudson River Company, at said times, also controlled and operated, through a long term lease, the railroad owned by the Boston & Albany Railroad Company, extending from Boston, Massachusetts, to Rensselaer, New York, opposite Albany, with operating rights over the bridge to Albany, New York, a distance of about 200 miles, and said Hudson River Company also controlled and operated, under a long term lease, the road of the New York & Harlem Railroad Company, extending from New York City to Chatham, in the State of New York, a distance of about 127½ miles.

The said Hudson River Company, at said times, owned about 90 per cent of the capital stocks of both The Lake Shore and Michigan Southern Railway Company and the Michigan Central Railroad Company, which Companies, and their respective lines of railroad, are hereinafter more fully referred to.

The amounts of the then outstanding capital stocks of said Lake Shore and Michigan Central Companies and the amounts thereof then held by said Hudson River Company were as follows:

	Capital stock outstanding	Amount held by Hudson River Company
Lake Shore Company.....	\$50,000,000	\$45,289,200
Michigan Central .....	18,738,000	16,819,300

The Lake Shore and Michigan Southern Railway Company, at the times above referred to, owned, controlled and operated a line of railroad extending from the City of Buffalo, New York, to the City of Chicago, Illinois, passing through a large number of cities, towns and villages, including Dunkirk, New York; Erie, in Pennsylvania; Cleveland, Sandusky and Toledo, in Ohio; Goshen, Elkhart, South Bend, La Porte, Indian Harbor and Whiting, in the State of Indiana. Said Lake Shore Company also then owned, leased and operated various other lines, which will be hereinafter more fully referred to. The said Lake Shore Company, at the times mentioned, owned a controlling interest in the capital stocks of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, herein sometimes called the Big Four Company, and the Toledo & Ohio Central Railway Company, herein sometimes called the Ohio Central Company.

The amounts of the then outstanding capital stocks of said Big Four and Ohio Central Companies and the amounts thereof then held [fol. 8] by the Lake Shore Company were as follows:

	Capital stock outstanding	Amount held by Lake Shore Company
Big Four Company .....	\$57,056,300	\$30,207,700
Ohio Central Company .....	10,208,000	9,547,700

The Michigan Central Railroad Company, a corporation organized under the laws of the State of Michigan, at the time of the consolidation above referred to, owned or otherwise controlled, through stock ownership, leases and trackage rights, and then operated, and now so owns or otherwise controls and operates, a line of railroad extending from Buffalo, in the State of New York, to Detroit, Michigan, Toledo, Ohio, and Chicago, Illinois, and various other intermediate cities and towns, which will be hereinafter more fully referred to.

The said Big Four Company, a corporation organized under the laws of the States of Ohio and Indiana, then owned or otherwise controlled and operated, and now owns, controls and operates, a system of railroads in Ohio, Indiana, Illinois and Michigan, extending from Cleveland and Sandusky, on Lake Erie, with trackage rights also from Toledo, to the Cities of Columbus, Springfield, Dayton and Cincinnati, and other intermediate places in Ohio, and to Indianapolis, Muncie, Terre Haute and other cities and towns in Indiana, to Chicago, Peoria, Bloomington, Kankakee and other places in Illinois, and to St. Louis, Missouri, as hereinafter more fully referred to.

The Ohio Central Company, a corporation of Ohio, then owned, leased or otherwise controlled, and now owns, leases or otherwise controls, a system of railroads in Ohio, consisting principally of two separate lines running from Toledo, in said State, south and south-easterly to and through the Ohio coal fields, one by way of Findlay, Kenton and Columbus, to Thurston, and the other running by way of Fostoria, Bucyrus, Mt. Gilead and Delaware, to Thurston, and thence on the Gallipolis, Ohio, to Charleston and Swiss, in West Virginia.

The said Ohio Central Company also then owned and operated, and now owns and operates, a railroad extending from Peoria, Ohio, on its main line, to St. Mary's, Ohio.

[fol. 9] The Cincinnati Northern Company, a corporation of Ohio and Michigan, then owned, controlled and operated, and now owns, controls and operates, a line of railroad from Franklin, Ohio, (a point a few miles south of Dayton on the main line of the Big Four Company from Cincinnati to Cleveland) northwest, through the western part of Ohio and the Cities of Greenville, Celina and Bryan, in Ohio, to Jackson, Michigan. At various points the said line connects with other Big Four lines and with the lines of the New York Central and Michigan Central Companies, as hereinafter more fully set forth.

The outstanding capital stock of said Cincinnati Northern Railroad Company is now and in December, 1914, was \$3,000,000, of which the said Big Four Company, in December, 1914, owned and it now owns \$1,707,400.



6. The agreement of consolidation, pursuant to which the defendant, New York Central Company, was organized, on December 22nd, 1914, among other things, provided (Article XII) as follows:

"Upon the consummation of this consolidation, as provided by law, all and singular the rights, privileges, exemptions, franchises, property (real, personal and mixed), licenses, easements and interests of every kind, nature and description, belonging to or in any way appertaining to said consolidating corporations, and each of them, shall be vested in and be the property of said consolidated corporation, and it shall succeed to and there shall attach to it all of the debts, obligations, contracts, tariffs, and any and all liabilities of each of the consolidating corporations.

"The foregoing shall not be deemed to exclude any other effects, rights or privileges provided by law as incident to or resulting from any such consolidation and not herein specifically mentioned."

By virtue of said agreement and pursuant thereto, the defendant, New York Central Railroad Company, acquired, on December 22nd, 1914, has ever since held and now holds the \$30,207,700 of the capital stock of the Big Four Company, \$9,547,700 of the capital stock [fol. 10] of the Ohio Central Company, and which, prior to said date, had been held by said Lake Shore Company, and also, through its control of the Big Four Company, controls \$1,707,400 of the capital stock of the Cincinnati Northern Company, and said defendant, on said date, also acquired, pursuant to said agreement, has ever since held and now holds, the \$16,819,300 of the capital stock of the Michigan Central Company, which, prior to December 22nd, 1914, had been held by the New York Central & Hudson River Railroad Company.

By reason of such ownership of a majority of the capital stocks of the several companies, in this and paragraph numbered 5 referred to, the defendant, New York Central Company, now completely dominates and controls, and for nearly ten years past has dominated and controlled, the properties, affairs, business and operations of said Michigan Central Company, The Ohio Central Company and the Big Four Company and, through it, the Cincinnati Northern Company.

A majority of the directors of the defendant, New York Central Company, now constitutes, and for nearly ten years last past has constituted, a majority of the directors of said Big Four Company and Michigan Central Company, and the executive officers of both the two last mentioned Companies are and for said period have been substantially the same as the executive officers of said New York Central Company.

The executive officers of the Cincinnati Northern and Ohio Central Companies now and for nearly ten years last past have been the executive officers of the New York Central Company, and all of the directors of said Cincinnati Northern and Ohio Central Companies now are and during said time have been either directors of or representatives of, and dominated and controlled by, said New York Central Company.

7. The acquisition by the New York Central Railroad Company, in December, 1914, and its continued holding of the controlling interest in the capital stock of the Big Four Company, to wit: \$30,207,700 of the common capital stock, and the acquisition by the said New York Central Company, in December, 1914, of \$16,819,300, the same being about 90 per cent of the outstanding capital stock of the [fol. 11] Michigan Central Railroad Company, and the continued holding thereof, and the acquisition by said defendant, New York Central Company, in December, 1914, of \$9,547,700—a controlling interest—of the capital stock of the Toledo and Ohio Central Railway Company and the continued holding thereof and the continued exercise of control and domination of said Big Four Company, the Michigan Central Company and the Ohio Central Company were and are in violation of the Federal Anti-Trust Acts, commonly known and referred to as the Sherman Act and the Clayton Act; and the same also were and are in violation of the constitutions and statutes of the States of Pennsylvania, Ohio, Illinois, Indiana and Michigan, and in violation of the common law and the public policies of said States as announced by various decisions of the Supreme Courts of said States, all as hereinafter set forth.

#### Lines of New York Central Company

8. The lines of railroad owned or otherwise controlled through stock ownership, leases and trackage rights, now operated and which since said consolidation have been so owned, controlled and operated by defendant, New York Central Company, except the line of the Michigan Central and Big Four Companies hereinafter referred to, are principally as follows:

A main line from New York City, N. Y., and intermediate cities and towns, to Buffalo, New York; Erie, Pennsylvania, Ashtabula, Cleveland, Sandusky, Toledo and Byran, in Ohio; Auburn, Goshen, South Bend and Elkhart, in Indiana; and Chicago, Illinois. Said Company also leases under a long term lease, and operates the West Shore Railroad, extending from Weehawken, N. J., opposite the City of New York, to the City of Buffalo, New York.

A line of railroad extending from the City of New York to Chat-ham, in the State of New York, owned by The New York & Harlem Railroad Company, and leased for a long term of years to the New York Central Company.

A line of railroad extending from Albany, State of New York, to the City of Boston, Massachusetts, owned by The Boston & Albany Railroad Company, and leased for a long term of years to the New [fol. 12] York Central Company.

A line of railroad extending from Toledo, Ohio, through Monroe, Michigan, to Detroit, Michigan, running closely parallel to the Michigan Central line between the same Cities.

A line of railroad extending from Toledo, Ohio, to Jackson, Michigan.

A line of railroad extending from Monroe, Michigan, via Fort Wayne Junction, Michigan, to Lansing, Michigan, and from Fort

Wayne Junction, via Sturgis and White Pigeon, Michigan, to Elkhart, Indiana, where it connects with the main line extending from New York to Chicago.

A line extending from White Pigeon, Michigan, to Kalamazoo and Grand Rapids, Michigan. At Kalamazoo and Grand Rapids connection is made with the lines of the Michigan Central and other companies.

A line extending from South Bend, Indiana, through Kankakee, Illinois, to Zearing, Illinois.

A line extending from Chicago, Illinois, and Indiana Harbor, Indiana, southward through western Indiana to Danville, Illinois, connecting there with two lines of the Big Four Company.

A line extending from Fort Wayne, Indiana, through Auburn, Indiana, and Fort Wayne Junction, Michigan, to Jackson, Michigan. Said line at Fort Wayne connects with other roads running to the north, south, east, west, and at Jackson, Michigan, connects with the Michigan Central, Big Four and other lines.

East of Cleveland, Ohio, and Buffalo, New York, said New York Central Company likewise owns or otherwise controls various other lines in Ohio, Pennsylvania and New York, and reaching to Boston, Massachusetts.

The Ohio Central, controlled by the New York Central, has two lines from Toledo, Ohio, extending southeasterly to Thurston, Ohio, in the Ohio coal fields, one of which lines runs via Findlay, Kenton and Columbus, and the other via Berwick, Martel and Mt. Gilead. At Thurston, Ohio, the said two lines join and extend to Gallipolis, Ohio, Charleston and Swiss, in West Virginia.

#### New York Central Connections

The lines of the New York Central Railroad also form a very important link in the chain of railroads operating between the Atlantic and Pacific seaboard, the Canadian boundary and the Gulf of Mexico. Particularly is this so in the following respects:

At Chicago, Illinois, the New York Central, Michigan Central and Big Four lines connect with the various great trunk lines reaching Chicago from the Pacific Coast and all parts of the vast country west, northwest, south and southwest of Chicago, and each of said lines can and should compete for eastbound traffic passing through the Chicago gateway.

Traffic originating at or west and southwest of St. Louis and passing through that gateway, destined to the Atlantic Seaboard or intermediate points, such as Toledo, Cleveland and Columbus, in the State of Ohio, and Detroit, in Michigan; Buffalo, in New York; Pittsburgh, in Pennsylvania, and many other cities in each of said States, and also in the States of Virginia West Virginia and Maryland, may be taken at Chicago by the New York Central, Michigan Central or the Big Four Company, or at St. Louis by the Big Four, and delivered at its destination to points located on those roads, or on other roads with which said Big Four, Michigan Central or New York Central lines connect.

And the same is true as to traffic originating at or passing through the gateway of Atlantic ports and other eastern points, which is destined in the opposite direction.

### Michigan Central

9. As hereinbefore alleged, the Michigan Central Railroad Company is under the complete domination and control of the New York Central Railroad, through its ownership of about 90 per cent. of Michigan Central stock and interlocking directors and officers.

The lines of railroad owned or otherwise controlled through stock ownership, leases and trackage rights, now operated, and which since said consolidation have been so owned, controlled and operated, by the Michigan Central Railroad Company are principally as follows:

On the north side of Lake Erie, the main line extending from Buffalo, New York, to Detroit, Michigan, and from Detroit via Ypsilanti, Jackson, Battle Creek, Kalamazoo and Niles, Michigan, to Chicago, Illinois.

Another line from Jackson to Niles, Michigan, running south of [fol. 14] the main line above described.

A line extending from Kalamazoo to South Haven on Lake Michigan.

A line extending from Benton Harbor, Michigan, to South Bend, Indiana, where connection is made with the New York Central.

A line from Jackson, Michigan, on the Michigan Central main line, to Grand Rapids, Michigan, where connection is made with the New York Central and other lines.

A line from Jackson, Michigan, to Lansing, Saginaw, Bay City and Mackinaw City, in Michigan; and at Bay City said line connects with the Michigan Central line from Detroit northwards.

A line from Detroit, Michigan, to Toledo, Ohio, where connection is made with the New York Central, Big Four and the lines of other companies radiating from Toledo. Said line closely parallels the line of the New York Central between the same Cities.

The lines of the Michigan Company likewise constitute an important link in the chain of railroads operating between Atlantic and Pacific seaboard points, the Canadian boundary and the Gulf of Mexico.

From Buffalo and Niagara Falls, in the State of New York, the line of the Michigan Company extends through lower Canada to Detroit, Michigan, and thence to Chicago, Illinois. At Detroit connection is made with its own line extending to Mackinaw City, on the northern boundary of Michigan, and also with its own line from Detroit to Toledo, Ohio, running closely parallel with the New York Central line between the same points.

Both the Michigan Central and New York Central lines reach numerous other common points in the State of Michigan, among which are the following, viz: Monroe, Wyandotte, Ypsilanti, Jackson, Lansing, Grand Rapids, Kalamazoo, Niles and Benton Harbor, and also South Bend, in Indiana.

At Grand Rapids, Owosso and Detroit, in Michigan, the lines of the Michigan Company connect with those of the Grand Trunk Railway, which extend to Montreal and many Canadian points, as well [fol. 15] as Portland, in the State of Maine, and intermediate points.

At Buffalo, New York, the lines of the Michigan Company connect with the New York Central and four other trunk lines extending to the Atlantic seaboard, to wit: the Lehigh Valley, the Delaware, Lackawanna & Western, the Pennsylvania and the Erie Companies.

At Toledo, Ohio, connection is made with all the railroads of other companies centering at that point and extending with their connections throughout the States of Ohio, Indiana, Illinois and other states, to the south and west.

At Chicago, Illinois, connection is made with all the railroads of other companies centering at that point and extending throughout all the states, west, northwest, south and southwest of Chicago to the Pacific Coast, the Gulf of Mexico and the Canadian boundary.

### Big Four Lines

10. The lines of railroad owned or otherwise controlled through stock ownership, leases and trackage rights, now operated, and which since said consolidation have been so owned, controlled and operated by defendant, Big Four Company, are principally as follows:

#### Three Lines from Lake Erie Ports

One of these lines extends from Cleveland, Ohio, through Galion and Bellefontaine, and other cities and villages in Ohio; Union City, Muncie, Indianapolis and Terre Haute, and other cities and towns in Indiana; Paris, Mattoon, and other cities and towns in Illinois, to the City of St. Louis, Missouri; also from Cleveland, Ohio, via Galion and Delaware, to Columbus, Ohio; also from Cleveland, Ohio, via Galion, Delaware, Springfield, and various places in Ohio and Indiana, to Indianapolis, in said State; and at Springfield, Ohio, said line connects with the line from Columbus, Ohio, making a through line from Columbus, via Springfield, to Indianapolis, Indiana, where said line connects with the line first above mentioned running from Cleveland, Ohio, to St. Louis, Missouri; also from Cleveland, via Galion, Delaware, Springfield and Dayton, to Cincinnati, Ohio.

The second of said lines from Lake Erie extends from Sandusky, Ohio, through Tiffin, Bellefontaine, Springfield, Dayton, to Cincinnati [fol. 16] nati, all in Ohio; said line connects at Bellefontaine, Ohio, with the main line extending from Cleveland, Ohio, via Indianapolis, Indiana, to St. Louis, Missouri, and at Springfield, Ohio, with the other line above described extending from Columbus, Ohio, to Indianapolis, Indiana, connecting there with the main line to St. Louis.

The third of said lines from Lake Erie extend from Toledo, Ohio, to Berwick, Ohio, where connection is made with the second line above mentioned and also with a line (leased by the New York Central Company) extending to a point near Galion, Ohio, where connec-

tion is made with the lines of the Big Four Company running to Cleveland, Columbus, Delaware, Springfield, Dayton and Cincinnati, in Ohio, and Indianapolis, Indiana, and St. Louis, Missouri.

In addition to the three lines above specifically described, said Big Four lines, owned, controlled and operated as aforesaid, comprise the following:

A line from the Ohio River at Cincinnati, Ohio, through Greensburg, Indianapolis and Lafayette, in Indiana, and Kankakee, Illinois, to Chicago, Illinois. At Indianapolis said line connects with the main line running to St. Louis, Missouri, and with the two Big Four lines extending east, one to Cleveland, Ohio, via Bellefontaine and Galion, and the other to Columbus, Ohio, via Springfield, Ohio, and from Springfield, via Delaware and Galion, Ohio, to Cleveland.

Another line extends from the Ohio River at Louisville, Kentucky, north through Greensburg, Anderson, Marion, Goshen and Elkhart, in Indiana, to Niles and Benton Harbor, Michigan. At Greensburg, Indiana, said line connects with the Big Four line from Cincinnati to Indianapolis, Indiana, and St. Louis, Missouri; also its two lines eastward, one to Columbus and one to Cleveland, Ohio, on which latter, at Bellefontaine, Ohio, connection is made with the other Big Four line extending from Sandusky, Ohio, through Tiffin, Springfield and Dayton, to Cincinnati and Columbus, Ohio.

Another Big Four line extends from Cairo, Illinois, on the Ohio River, northward through the eastern part of Illinois, via Danville and Kankakee, in said State, to Chicago, Illinois. At Paris, Dan-[fol. 17] ville and Kankakee, in said State, said line connects with other Big Four lines,—at Kankakee with the New York Central, and at various points on said line from Cairo to Chicago connects with various lines of railroad operated by other companies.

Another Big Four line extends from Indianapolis, Indiana, through Danville and Bloomington, Illinois, to the City of Peoria, in said State. At Danville, Illinois, said line connects with the Big Four line extending from Cairo to Chicago, Illinois, with the lines of other railroad companies running to the north, south, east and west.

Another Big Four line—the Cincinnati Northern, controlled by the Big Four Company,—extends from Franklin, Ohio (a point a few miles south of Dayton, on the main line from Cincinnati to Cleveland), northward through the western part of Ohio and the Cities of Greenville, Celina and Bryan, in Ohio, to Jackson, Michigan. At various points the said line connects with other Big Four lines and with lines of the New York Central and Michigan Central Companies, as well as with the lines of other railroad companies crossing said Cincinnati Northern line.

#### Parallel and Naturally Competing Lines

11. Plaintiff further alleges that the lines of railroad respectively controlled and operated by the Big Four Company, the New York Central Company and the Michigan Central Company are, to a large extent, parallel and naturally competing lines for both interstate

and intrastate commerce, and that each and all of them are, and since December 22nd, 1914, have been, dominated and controlled by the New York Central Company, its directors and officers, and that each of said lines so controlled and dominated forms an important connecting link in the chain of trunk line railroads operated by various companies between the Atlantic and Pacific seaboard, the Canadian boundary and the Gulf of Mexico.

The lines of said three Companies can and should compete each with the other and, except for the domination and control above referred to, would so compete for all eastbound traffic originating at points west, northwest, south and southwest of Chicago, St. Louis [fol. 18] and Cincinnati, and destined for said cities and other points east, and to foreign countries. And a similar state of facts applies to traffic originating or passing through the gateway of New York, and other Atlantic ports and eastern railroad centers, destined in the opposite direction. That as to intrastate commerce, the said lines in the State of Ohio, Indiana, Michigan and Illinois, which are owned or controlled by the New York Central Company, are in a large part parallel and naturally competing lines with those owned, controlled and operated by the Big Four Company and the Michigan Central Company.

The two parallel lines of the Toledo and Ohio Central, controlled by the New York Central Company, are for intrastate traffic, natural competitors with each other, and also with the Big Four line extending from Columbus, Ohio, to Toledo, and other places in Ohio; and for interstate traffic, said Ohio Central lines are natural competitors with the Big Four line from Columbus, Ohio, and its connections to Detroit, and other places in Michigan; Goshen, Elkhart, South Bend, and other places in Indiana; Chicago, Illinois, and other cities and towns west and north of Chicago.

12. The acquisition, possession and ownership by the defendant, the New York Central Railroad Company, as hereinbefore alleged, of the controlling interests in the capital stocks of the Michigan Central, Big Four and Ohio Central Companies, and the control and domination of the policy, management, affairs, business, properties, operations and directorates of said railroads, and each of them, as hereinbefore set forth, were at the time or times thereof respectively, and they now are, in violation of the common law and the statutes of the United States, and the constitutions, statutes, common law and public policies of the several states through or into which they extend as aforesaid, to wit:

(a) In violation of an Act of Congress known as the Sherman Anti-Trust Act, approved July 2, 1890, being Chapter 647, Sec. 1, et seq., of the Compiled Statutes of 1890, and the acts amendatory thereof and supplementary thereto.

(b) In violation of an Act of Congress known as the Clayton Act, approved October 15, 1914, entitled: "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and For Other Purposes."

(c) In violation of Section 9027 of the General Code of Ohio, which provides that a railroad company, formed by the consolidation of a company or companies of the State of Ohio with a company or companies of another state or states, may make a further consolidation with a company or companies of another state or states owning continuous connected, but not parallel or competing, lines.

(d) In violation of Sections 8806 to 8808, inclusive, of the General Code of Ohio, which prohibit the aiding or the leasing of, or other arrangements between such parallel or competing lines.

(e) In violation of Section 6391 of the General Code of Ohio, which prohibits combinations of capital by corporations in order to create or carry out restrictions in trade or commerce, or to prevent competition in transportation.

(f) In violation of Section 8683 of the General Code of Ohio, providing that a private corporation may purchase or otherwise acquire and hold shares of stock in other kindred, but not competing, private corporations, domestic or foreign, and providing further that this shall not authorize the formation of a trust or combination for the purpose of restricting trade or competition.

(g) In violation of Section 3866 of Burns' Annotated Statutes of Indiana, prohibiting every scheme, design, understanding, contract, combination or conspiracy in restraint of trade.

(h) In violation of Section 3867 of Burns' Annotated Statutes of Indiana, providing that every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce within the State of Indiana, shall be punishable by fine, or by fine and imprisonment.

(i) In violation of Sections 5339, 5339a, 5343b and 5220e of Burns' Annotated Statutes of Indiana, which forbid any railroad company to purchase or lease, in whole or in part, any competing line of railroad in the State of Indiana, or any other state.

(j) In violation of the common law and public policy of the State of Indiana, prohibiting monopolies as announced by the decisions [fol. 26] of the Supreme Court of that State as follows:

Eel River R. Co. vs. States, 155 Ind. 433.

Indiana Union R. Co. vs. Dohn, 153 Ind. 10.

Indiana vs. Portland Gas Company, 153 Ind. 483.

Board vs. Lafayette R. R. Co., 50 Ind. 85.

Chicago and I. and L. Ry. Co. vs. Southern Ind. Ry. Co., 38 Ind. App. 234.

Cleveland, Etc. R. R. Co. vs. Closser, 126 Ind. 348.

(k) In violation of Article XI, Section 11, of the Constitution of the State of Illinois, which provides that no railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line.



(l) In violation of Section 23, of Chapter 114, of Smith's Illinois Revised Statutes, which provides that no railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line.

(m) In violation of the common law and public policy of the State of Illinois against monopolies as defined by decisions of the Supreme Court of the State in the following cases among others:

Harding vs. American Glucose Company, 182 Ill. 551.

Chicago, Etc. Coal Company vs. People, 214 Ill. 421.

Dunbar vs. American Telegraph Company, 224 Ill. 9.

Ford vs. Chicago Milk Shippers' Association, 115 Ill. 166.

People vs. Butler St. Foundry, 201, Ill. 236.

Sanford vs. People, 121 Ill. App. 619.

(n) In violation of Section 8, of Article XII, of the Constitution of the State of Michigan, which provides that no railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a parallel or competing line.

(o) In violation of Section (8263) of the Compiled Laws of Michigan, which provides that no railroad companies owning parallel or competing lines shall be permitted to consolidate themselves into one corporation.

(p) In violation of Section- (15013) to (15026) and (15033) to (15039) of the Compiled Laws of Michigan, prohibiting agreements, contracts and combinations in restraint of trade or commerce, and prohibiting trusts and monopolies which restrain competition in transportation.

(q) In violation of Section 4, Article XVII, of the Constitution of the State of Pennsylvania, which provides that no railroad corporation shall consolidate the stock, property or franchises of [fol. 21] such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad corporation owning, or having under its control, a parallel or competing line, and that no officer of such railroad corporation shall act as an officer of any other railroad corporation owning, or having the control of, a parallel or competing line.

(r) In violation of the Public Laws of 1901 of the State of Pennsylvania, page 349, No. 216; Public Laws of 1865, page 49, No. 35; Public Laws of 907, No. 254, prohibiting monopolies by carriers and the common control of parallel or competing lines.

All of the foregoing provisions of State and Federal laws, statutes and constitutions are now in full force and effect, and were in force and effect at the time of all matters and things herein complained of.

Plaintiff further avers that the constitutions, statutes, common law and public policy of the several states as hereinbefore cited, wherein the New York Central Railroad Company is incorporated, were and are part and parcel of the contract generally existing be-

tween and among the said defendant corporation, its stockholders, including plaintiff, and the state or states under the laws of which said defendant corporation was organized and now exists.

13. Plaintiff alleges that, by reason of the facts and the principles and provisions of law hereinbefore cited that are applicable thereto, the said defendant, The New York Central Company, was organized for the illegal purpose of establishing, and did and does constitute, an unlawful combination in restraint of interstate and intrastate trade and commerce, and the suppression of the competition in transportation of passengers and goods, to the injury of all its stockholders, including this plaintiff; and said defendant's conduct will, if its continuance of the unlawful control and domination or management of said parallel and normally and potentially competing lines of railroad is not frustrated by a decree of this court, render its charter subject to forfeiture in some or all of the several states aforesaid, through or into which its lines extend, and under the laws of which it was and is incorporated, and will subject said defendant to the pains and penalties of the Sherman Anti-Trust Act, the Clayton Act, and of the various provisions of state constitutions and statutes hereinbefore cited. All of which, unless restrained and permanently enjoined by order and decree of this court, will work great and irreparable injury and damage to the defendant and its stockholders, including the plaintiff, for the redress of which the plaintiff has and will have no adequate remedy at law.

14. Plaintiff alleges that it was a shareholder of the defendant Company at the time of the transactions of which complaint is herein made, and that it brings this suit on behalf of itself and of all other stockholders of the defendant Company similarly situated, and who may choose to come in and contribute to the expense of this suit upon such terms as this Honorable Court may impose.

15. It is useless and futile to demand of the persons acting as directors and officers of the defendant Company that they discontinue their illegal practices herein complained of, and that they cause said defendant Company to divest itself of the ownership of the controlling interest in each and all of said parallel and normally and potentially competing lines of railroad; that this plaintiff has, by means of its former suit, hereinafter described, and by protest and objections made at meetings of the stockholders of said Hudson River and Lake Shore Companies, and to the directors thereof, and otherwise, vainly sought to prevent and correct the illegal acts and conduct herein complained of.

16. Plaintiff further shows and alleges that the matter in controversy herein, as shown in the foregoing allegations, exceeds, exclusive of interest and costs, the sum or value of \$3,000, and is between citizens of different states, to wit: between plaintiff, a citizen of Maine and of no other state, and the defendant, which is a citizen of each of the States of New York, Pennsylvania, Ohio, Indiana,

Illinois and Michigan, and no other. And this suit is one of a civil nature in equity, whereof this court properly has jurisdiction under the acts of Congress in such case made and provided; and this suit is not a collusive one, to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. The suit arises under the Constitution and laws of the United [fol. 23] States regulating commerce and to protect trade and commerce against restraint and monopolies, and also arises under the constitutions and laws of the States of Ohio, Pennsylvania, Indiana, Illinois and Michigan.

17. On the 8th day of December, 1914, the plaintiff herein filed in the Common Pleas Court of Cuyahoga County, Ohio, its petition or bill of complaint against The Lake Shore and Michigan Southern Railway Company and the New York Central and Hudson River Railroad Company, et al., for an injunction restraining and preventing the then proposed consolidation of said railroad companies and nine of their subsidiary companies under the said agreement dated April 29, 1914, executed by the directors of the eleven companies to be consolidated as hereinbefore referred to, unless and until said New York Central and Hudson River Railroad and The Lake Shore and Michigan Southern Railway Companies should divest themselves of the controlling interests respectively held by them in the capital stocks of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, known as the Big Four; The New York, Chicago and St. Louis Railroad Company, known as the Nickel Plate; The Michigan Central Railroad Company, The Toledo and Ohio Central Railway Company, The Lake Erie and Western Railroad Company and Western Transit Company, some of which stocks the defendant claims to have since disposed of, to wit: those of the Nickel Plate, Lake Erie and Western and Western Transit Companies, and praying also that if, pending said action, such consolidation should be effected, the same be set aside, and for substantially the relief hereinafter prayed for. The plaintiff here, by its said petition or bill of complaint so filed in said State Court, charged among other things that the various lines of railroad, which are hereinbefore alleged to be parallel and potentially competing lines engaged in interstate and intrastate commerce, were likewise at that time also parallel and potentially competing lines and similarly engaged; said bill further charged that the intercorporate control and domination or management of said lines, which is hereinbefore alleged to be exercised by the defendant, was, at the time of the filing of said former bill, threatened to be vested in and exercised by said proposed consolidated corporation, defendant herein; and [fol. 24] said former bill also charged that said threatened control and domination or management by said consolidated corporation would be in violation of the same laws, namely, the Sherman Anti-Trust Act, the Clayton Act, and the various constitutions, statutes, common law and public policies of the several states through or into which said lines extend, as the acts and conduct of the defend-

ant, which are hereinbefore complained of are alleged herein to violate.

Pending said former suit in said Court of Common Pleas said consolidation was effected and consummated, and thereafter, on January 8, 1915, said defendants therein, The Lake Shore and Michigan Southern Railway Company and The New York Central and Hudson River Railroad Company, and said consolidated corporation, The New York Central Railroad Company, defendant herein, filed in said Court their petition for removal of said cause to the United States District Court for the Northern District of Ohio, Eastern Division, whereupon such proceedings in said cause were had in the said District Court, and on reviews thereof in the Circuit Court of Appeals for the Sixth Circuit and in the Supreme Court of the United States, that said petition or bill of complaint was finally dismissed for want of jurisdiction, because, as to the New York Central and Hudson River Railroad Company, there was no lawful service of summons upon it, and because as to all defendants, the suit was not brought originally in the proper court of the United States instead of in the said State Court; but such dismissal was expressly qualified by the judgment and decree of the Supreme Court of the United States, which provided that, whereas said Circuit Court of Appeals had qualified the dismissal by making it without prejudice as to all parts of the bill, save one, namely, so much of the bill as based the right to relief on asserted violations of the Sherman Anti-Trust Act and the Clayton Act, such dismissal should have been, and was by the Supreme Court of its own motion, ordered to be without prejudice as to that part also. This action is, therefore, brought pursuant to the leave so especially granted, sua sponte, by the Supreme Court of the United States.

Plaintiff has no full, complete and adequate remedy at law and, [ofl. 25] therefore, prays for relief in this court of equity as follows:

(1) That the defendant appear and answer this bill of complaint, but not under oath, its answer under oath being hereby expressly waived.

(2) That the domination and control by the defendant, The New York Central Railroad Company, over the properties, affairs, business, management, operations and directorates of the Michigan Central Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Cincinnati Northern Railroad Company and The Toledo and Ohio Central Railway Company, and the acquisition of controlling interests in the capital stocks of said Companies, as aforesaid, be declared and decreed to be ultra vires, illegal and void, and in violation of the constitutional and statutory provisions and of the common law and public policies, both state and federal, as hereinbefore set forth, and in violation of the rights and to the injury and damage of the shareholders of said defendant, including this plaintiff;

(3) And that said defendant, The New York Central Railroad Company, may be restrained and perpetually enjoined from dominating or controlling the other railroad companies above mentioned,

their affairs, property, business, operations, management and directorates, either directly or indirectly;

(4) That the defendant, The New York Central Railroad Company, its officers, agents, directors, proxies and attorneys, and each and every of them, be enjoined from voting, or causing to be voted, at any meeting of stockholders, the stocks of The Michigan Central Railroad Company, Big Four and Ohio Central, or of any of them, acquired and held by The New York Central as aforesaid, and also the stock of The Cincinnati Northern Company, acquired and held by the Big Four Company as aforesaid;

(5) That an injunction may be issued restraining The New York Central Company from permitting its directors and officers from serving as directors, officers or agents of the Michigan Central, Big Four, Ohio Central and Cincinnati Northern Companies, or of any of them;

(6) That pending this suit separate receivers be appointed to [fol. 26] take charge and possession of the shares of the capital stocks of the Michigan Central, Big Four and Ohio Central Companies, now owned as aforesaid by the defendant, The New York Central Railroad Company, and that upon final hearing that the defendant, The New York Central Railroad Company, be ordered and required to sell and dispose of all of the shares of stock owned or claimed to be owned by it in said Michigan Central, Big Four and Ohio Central Companies, in such manner and to such persons and corporations as have no interests allied with or controlled by said defendant, The New York Central Railroad Company, or any of its subsidiary or controlled companies, but to such persons and corporations as will manage and operate said Michigan Central, Big Four and Ohio Central Companies as independent corporations, free from the domination and control of said defendant, The New York Central Railroad Company, or any of its allied interests or corporations;

(7) Plaintiff prays that a temporary restraining order may be issued granting the plaintiff the injunctive relief above set forth, pendente lite; that upon final hearing such restraining order may be made perpetual; and the plaintiff may be granted the further and other relief to which it may be entitled in equity and good conscience;

(8) Plaintiff prays for the following process:

(a) The writ of subpoena issued out of and under the seal of this Court, directed to said defendant, The New York Central Railroad Company, requiring it to appear and answer this bill of complaint and to stand to and abide by the orders and decree of the Court herein.

(b) The writ of injunction issued out of and under the seal of this Court, directed to said defendant, restraining it during the pendency of this suit, as above prayed.

And plaintiff will ever pray, etc.

The General Investment Company, by Clarence H. Venner, President. Snyder, Henry, Thomsen, Ford & Seagrave, by Frederick A. Henry, Attorneys for Plaintiff, 914 Williamson Building, Cleveland, Ohio.

[fol. 27] Sworn to by Clarence H. Venner. Jurat omitted in printing.

[fol. 28] IN UNITED STATES DISTRICT COURT

SUBPOENA AND MARSHAL'S RETURN—Filed July 5, 1924

THE UNITED STATES OF AMERICA,  
Northern District of Ohio, ss:

The President of the United States of America to the Marshal of the Northern District of Ohio, Greeting

You are hereby commanded to summon the New York Central Railroad Company, citizen of and resident of the State of Ohio, if it be found in your District, to be and appear in the District Court of the United States for the Northern District of Ohio, aforesaid, at Cleveland, on or before the twentieth day after service, excluding the day thereof, to answer a certain Bill in Equity, filed and exhibited in said Court, against it by General Investment Company, citizen of and resident in the State of Maine.

Hereof it is not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness, the Honorable John M. Killits and the Honorable D. C. Westenhaver and the Honorable Paul Jones, District Judges of the United States, this 20th day of June, A. D. 1924, and in the 148th year of the Independence of the United States of America.

B. C. Miller, Clerk, by C. A. Wilder, Deputy Clerk. (Seal.)

#### Memorandum

The said defendant is required to file its answer or other defense in the Clerk's Office on or before the twentieth day after service, excluding the day thereof, otherwise the bill may be taken pro-confesso.

B. C. Miller, Clerk.

[Endorsed:] 23/421. No. 1180. U. S. Marshal's No. 14227. United States District Court, Northern District of Ohio. General Investment Company vs. The New York Central Railroad Co. Subpoena in Equity. Return day July 10, 1924. \$25.00 deposited by plaintiff for costs. Snyder, Henry, Thomsen, Ford & Seagraves, Complainant's Attorney.

## U. S. Marshal's Return

THE UNITED STATES OF AMERICA,  
Northern District of Ohio, ss:

Received this writ at Cleveland, Ohio, June 20, 1924, and on the same day, at the same place, I served the within named The New York Central R. R. Co. by handing to F. L. Long, Agent of said N. Y. C. R. R. Co. personally a true and certified — hereof, with all endorsements thereon The President, Secy. Treas. or other chief officer could not be found in my district.

Geo. A. Stauffer, U. S. Marshal. A. L. Gibson, Deputy.

## Marshal's Fees:

Travel .....	6
Service .....	2.00
	<hr/>
	2.06

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF DEFENDANT TO DISMISS—Filed July 3, 1924

Now comes the defendant and moves the Court as follows:

1. To dismiss the bill of complaint for the following several reasons:

- (a) For want of equity;
- (b) Because of the laches and delay of the plaintiff, which is not excused by the matter set up in Par. 17;
- (c) The Court is without jurisdiction of the subject matter;
- (d) The plaintiff has no right or standing to maintain this suit;
- (e) Said bill of complaint fails to state facts which entitle the plaintiff to any of the relief therein demanded.

2. To dismiss so much of said bill of complaint as seeks injunctive relief on the ground of the defendant's alleged violations of the so-called Sherman Act and Clayton Act (and the parts of the bill relating to such matters) for the following reasons:

- (a) Plaintiff has no standing to maintain a suit based upon such violations;
- (b) The bill does not show any threatened loss or damage sustained by plaintiff by violation of said laws;

(c) As appears from the bill, said alleged violations are claimed to have occurred in respect of matters subject to the regulation, supervision and jurisdiction of the Interstate Commerce Commission.

3. To dismiss so much of said bill of complaint as seeks injunctive relief against the defendant because of its acquisition of the majority of the stock of said Big Four, Michigan Central, Ohio Central and Cincinnati Northern Companies, and the alleged domination and control resulting from such acquisition and the holding of such stock (with the parts of said bill relating to said matters) because the Court is without jurisdiction to entertain this suit or grant relief upon such grounds.

4. To dismiss so much of said bill of complaint as seeks relief against the defendant for alleged violations of state constitutions or statutes, or the common law (with the portions of said bill relating to said matters) on the following several grounds:

(a) The bill fails to state facts sufficient to constitute or show such violations;

(b) The federal remedies and procedure provided by the Interstate Commerce Act and the Clayton Anti-Trust Act in respect of interstate commerce, are exclusive of injunctive relief on account of the alleged monopolistic control, combinations and consolidations in restraint of intrastate commerce, therein claimed to be in violation of said state statutes, constitutions and common law.

West, Lamb & Westenhaver, Attorneys for Defendant. S. H. West, of Counsel.

July 2, 1924.

[fol. 31]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OPINION ON MOTION TO DISMISS—Filed Oct. 24, 1924

This cause is before me on defendant's motion to dismiss. The controversy here involves the same facts as were considered in *General Investment Company v. Lake Shore & Michigan Southern Ry. Co.*, (6 C. C. A.) 269 Fed. 236; same case on appeal, 260 U. S. 261. The threatened consolidation, which it was sought in that litigation to prevent, is now averred to have been completed and to produce an illegal combination in restraint both of interstate and of intra-state commerce, and to be in violation both of the Sherman Anti-Trust Act, as amended by the Clayton Act, and the local law of Ohio and certain other states. As I read the bill in this case, all other grounds upon which relief was sought in the former litigation are now eliminated.

The motion to dismiss will be sustained. It is settled that a private party may not maintain a bill in equity to enjoin or dissolve an



illegal trust created or maintained in violation of the Sherman Anti-Trust Law, and this is true whether the suit is brought by a stranger to the combination or by a stockholder of a corporation party thereto. *General Investment Co. v. Lake Shore & Mich. Southern Ry. Co.*, 269 Fed. 236; same case on appeal, 260 U. S. 261, 286; *Paine Lumber Co. v. Neal*, 244 U. S. 459. Congress has also assumed control of the subject matter of stock ownership in parallel or competing railroad carriers engaged in interstate commerce. Act of Oct. 15, 1914, known as the Clayton Act, Secs. 7, 8, 11 and 16 (U. S. Comp. Stat. 1918, Secs. 8835g, 8835h, 8835j and 8835o). It has also assumed jurisdiction of and legislated [fol. 32] upon the subject matter of the consolidation of railroad carriers doing an interstate business. Sec. 5, Interstate Commerce Act, as amended by Sec. 407, Transportation Act, 1920 (U. S. Comp. Stat. 1923, Sec. 8567); *United States v. Southern Pacific R. R. Co.* (8 C. C. A.) 290 Fed. 443. This being so, upon the allegations of plaintiff's bill, the alleged combination in restraint of intra-state commerce is so inextricably interwoven with the restraint of interstate commerce that it is impossible to render a judgment with respect thereto without at the same time adjudging as to the combination in restraint of interstate commerce. So to do would be indirectly permitting a private party to do that which it is forbidden to do directly. Hence it follows that the rights of the plaintiff, if any, so far as the same rest upon alleged combinations in violation of state or local law, are dominated by the Federal law. That Congress has so intended, so far as railroad carriers engaged in interstate trade are concerned, no matter by what state they may have been chartered, is obvious, and it seems to me no doubt can be entertained as to the constitutional power of Congress so to legislate. In this aspect, the principles of law announced and applied in the following cases are controlling: *Louisville & Nashville R. R. Co. v. Mottley*, 219 U. S. 467; *Houston & Texas Ry. Co. v. United States*, 234 U. S. 343; *American Express Co. v. Caldwell*, 244 U. S. 617; *Illinois Central R. R. Co. v. Public Utilities Com'n.* 245 U. S. 493; *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563.

D. C. Westenhaver, Judge.

[fol. 33]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING BILL OF COMPLAINT—Nov. 7, 1924

This day came the parties by thir attorneys and this cause came on to be heard on the motion of the defendant to dismiss the bill of complaint for the reasons in said motion stated, and was argued by counsel. On consideration whereof and the Court being fully advised, said motion is hereby allowed and said bill of complaint

is dismissed at the plaintiff's costs; to all of which the plaintiff then excepted.

O. K. 11/6/24. Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave. S. H. West.

[fol. 34]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Dec. 5, 1924

The above named plaintiff, General Investment Company, conceiving itself aggrieved by the final decree made and entered on the 6th day of November, 1924, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio,  
Solicitors for Plaintiff.

[fol. 35]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Dec. 5, 1924

And now, upon the 5th day of December, A. D. 1924, comes the said complainant, General Investment Company, by its solicitor, Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio, and in connection with its petition for appeal says that the final decree in said cause is erroneous and against the just rights of said complainant, for the following reason, namely:

The Court erred in sustaining the motion of the defendant, The New York Central Railroad Company, to dismiss the bill of complaint and in ordering that the cause be dismissed accordingly.

Wherefore, the said appellant, General Investment Company, prays that the said decree of the District Court of the United States for the Northern District of Ohio, Eastern Division, be reversed, and that such directions be given and decree made in respect to the matters herein referred to in favor of this complainant as will revoke

said dismissal for want of jurisdiction, and require said cause to be heard upon its merit, with costs to be taxed.

General Investment Company, by Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio, Solicitors for Plaintiff.

---

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Dec. 5, 1924

On petition of the complainant, General Investment Company, by Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, its solicitors:

It is ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein on the 6th day of November, 1924, be and the same hereby is allowed, and that a certified transcript of the record, in accordance with the rules and practice for the courts of equity of the United States, as promulgated by the Supreme Court of the United States November 4, 1912, forthwith be transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed in the sum of Five Hundred Dollars.

---

[fol. 37] BOND ON APPEAL FOR \$500—Approved; omitted in printing

---

[fol. 38] CITATION—In usual form, showing service on S. H. West; omitted in printing

---

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF DISTRICT JUDGE CERTIFYING THE QUESTION OF JURISDICTION—Filed Dec. 5, 1924

Be it remembered that on the 6th day of November, 1924, this cause came on to be heard upon the motion of the defendant, The New York Central Railroad Company, to dismiss the said suit on the ground that the District Court of the United States for the Northern District of Ohio, Eastern Division, had no jurisdiction as a Federal Court over the subject matter of the cause, and the Court, upon due

consideration of said motion and after hearing the arguments of counsel, sustained the same on the sole ground that this Court had no jurisdiction of the said cause as a Federal Court and accordingly directed that a decree be made and entered herein dismissing said suit for want of jurisdiction, and this ruling of the Court is hereby certified to the Supreme Court of the United States.

I further certify that the matter in controversy herein, as shown by the record, exceeds in value Three Thousand Dollars (\$3,000.00), exclusive of interest and costs.

Dated this 5th day of December, 1924.

D. C. Westenhaver, Judge of the United States District Court  
for the Northern District of Ohio, Eastern Division.

[fol. 40]      IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Jan. 5, 1925

On application of plaintiff and for good cause shown, it is ordered that the time for filing the transcript of record in the Supreme Court of the United States be extended to February 5, 1925.

[fol. 41]      IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Dec. 5, 1924

To the Clerk:

You are requested to take a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers or exhibits, to wit:

Bill of Complaint;  
Writ of Subpœna and Marshal's Return of Service thereof;  
Defendant's Motion to Dismiss Bill;  
Memorandum Opinion Granting Motion to Dismiss;  
Journal Entry of Decree of Dismissal;  
Petition for Appeal;  
Assignment of Errors;  
Order allowing appeal;  
Bond on Appeal;  
Certificate of the District Judge Certifying the question of Jurisdiction;

Citation;

Order extending time for filing transcript of record;

Precipe for Transcript.

You will please certify the foregoing, to be printed in accordance with the rules of the Supreme Court of the United States.

Frederick A. Henry, of Snyder, Henry, Thomsen, Ford & Seagrave, No. 914 Williamson Building, Cleveland, Ohio, Solicitors for Appellant.

We acknowledge service of the foregoing præcipe by copy this 5th day of December, 1924.

The New York Central Railroad Company, by Saml. H. West.

---

[fol. 42] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

NORTHERN DISTRICT OF OHIO, ss:

I, B. C. Miller, Clerk of the United States District Court within and for said District, do hereby certify that the foregoing pages contain a full, true and complete copy of the record and all proceedings in this cause, including the petition for appeal, assignment of errors, order allowing appeal and the bond on appeal, in accordance with the præcipe for transcript filed herein, the originals of which remain in my custody as Clerk of said Court.

There is also attached to and transmitted herewith the citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name and affixed the seal of said Court, at Cleveland, in said District, this 4th day of February, A. D. 1925, and in the 149th year of the Independence of the United States of America.

B. C. Miller, Clerk, by T. J. Denzler, Deputy Clerk. (Seal of the District Court, Northern District of Ohio.)

Endorsed on cover: File No. 30,864. N. Ohio D. C. U. S. Term No. 274. General Investment Company, appellant, vs. The New York Central Railroad Company. Filed February 11th, 1925. File No. 30,864.

(6985)